

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

VICTORIA CONWAY

PLAINTIFF

v.

CAUSE NO. 1:20-cv-107-LG-MTP

**BILOXI PUBLIC SCHOOL DISTRICT,
SHANE SWITZER, ARTHUR
MCMILLAN, and DIXIE
ELEUTERIUS**

DEFENDANTS

ORDER STRIKING JOINDERS

BEFORE THE COURT are the [73] Joinder filed by Defendant, Biloxi Public School District (“the School District”) to Defendant Arthur McMillan’s [67] Motion to Dismiss and the [82] Joinder filed by the School District to McMillan’s [80] Reply in Support of his Motion to Dismiss. For the following reasons, the Court finds that the Joinders should be stricken.

In this case, Plaintiff Victoria Conway alleges that the School District violated her federal and state rights when it allegedly terminated or failed to renew her employment following her reports of illegal financial activity within the organization. (Pl.’s 2d Am. Compl., ECF No. 60). Plaintiff alleges liability “for retaliating against Plaintiff for exercise of her rights protected by the First Amendment.” (*Id.* ¶ 14). Plaintiff also alleges wrongful discharge under Mississippi state law in violation of the *McArn* doctrine, Miss. Code Ann. § 25-9-173, and the School District’s Whistleblower Protection Policy. (*Id.* ¶¶ 14, 17).

Plaintiff has also sued three individual defendants under theories of malicious interference with employment and civil conspiracy. (*Id.* ¶¶ 15-16). Two of these defendants have filed Motions to Dismiss these claims.

The School District, however, did not file a Motion to Dismiss in response to Plaintiff's Second Amended Complaint. Rather, the School District filed an [61] Answer, in which it raised Plaintiff's failure to state a claim under Rule 12(b)(6) as its first defense. (*See* Answer, ¶ 1, ECF No. 61). Afterwards, the School District joined Defendant McMillan's Motion to Dismiss on the subject of qualified immunity. (*See* Joinder, ECF No. 73) ("Biloxi Public School District incorporates by reference the argument and supporting authority of Co-Defendant McMillan regarding entitlement to qualified immunity for all claims asserted against this Defendant in Plaintiff's Second Amended Complaint."). This Joinder should be stricken, as qualified immunity does not apply to the School District. "As a municipality, the School District 'does not enjoy immunity from suit, either absolute or qualified, under § 1983.'" *Idom v. Natchez-Adams School Dist.*, 115 F. Supp. 3d 792, 797 (S.D. Miss. 2015) (citing *Burge v. Parish of St. Tammany*, 187 F.3d 452, 466 (5th Cir. 1999)).

In addition, Local Rule 7(b) provides: "Any written communication with the court that is intended to be an application for relief or other action by the court must be presented by a motion in the form prescribed by this Rule." L.U. Civ. R. 7(b). Relatedly, Local Rule 7(b)(2)(A) provides: "Affirmative defenses must be raised

by motion. Although the affirmative defenses may be enumerated in the answer, the court will not consider recognize a motion included within the body of the answer, but only those raised by a separate filing.” *Id.* R. 7(b)(2)(A).

The Court finds that the School District should make any request for 12(b)(6) dismissal in a separate Motion pursuant to Local Rule 7(b) rather than incorporated in its Answer or a Joinder to another party’s Motion. *See Nat’l Security Fire & Cas. Ins. Co. v. Townsend*, No. 4:17CV64-DMB-JMV, 2018 WL 4481872, at *2 n.3 (N.D. Miss. Sep. 17, 2018) (“Because Olugu did not file a separate motion to dismiss as required by the Local Rules, the Court does not recognize the 12(b)(6) request to dismiss in her answer.”); *Noble v. Bank of Am., N.A.*, No. 1:15CV352-LG-RHW, 2016 WL 70859, at *2 (S.D. Miss. Jan. 6, 2016) (striking a party’s joinder where the subject Motion did not demonstrate that the plaintiff’s claims against the joining party should be dismissed).

IT IS THEREFORE ORDERED AND ADJUDGED that the [73] Joinder filed by Defendant, Biloxi Public School District to Defendant Arthur McMillan’s [67] Motion to Dismiss and the [82] Joinder filed by the School District to McMillan’s [80] Reply in Support of his Motion to Dismiss are **STRICKEN**.

SO ORDERED AND ADJUDGED this the 17th day of December, 2020.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE